

1 HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 HUI SON LYE and DAVID LYE,  
11 husband and wife,

Plaintiffs,

v.

CITY OF LACEY, et al.

Defendants.

CASE NO. 3:11-cv-05983-RBL

ORDER ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

14  
15 THIS MATTER is before the Court on remaining Defendants' Motion for Summary  
16 Judgment. The Court previously addressed the factual background and the legal viability of  
17 Plaintiff<sup>1</sup> Lye's claims in dismissing her constitutional, conspiracy, outrage, defamation, and  
18 intentional tort claims against the Church Defendants [Dkt. #26]. The City of Lacey Defendants  
19 now seek dismissal of Lye's remaining claims against them [Dkt. #31].

20 In 2009, Lye began voicing her concern that the Sacred Heart Catholic Church was not  
21 giving its Mass in Korean, despite her claim that the Archbishop had so instructed. The Church  
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23 \_\_\_\_\_  
24 <sup>1</sup> Hui Son Lye and David Lye brought this action together; however, David Lye does not claim to be  
personally involved in any of the events in question. The remainder of this order will refer to Hui Son Lye as a  
singular plaintiff.

1 claims (and demonstrates) that Lye engaged in “threatening and harassing actions against parish  
 2 personnel,” and generally disrupted church services. After several incidents and efforts to  
 3 persuade her to stop, the Church issued Lye a “no trespass” order, told her to worship elsewhere,  
 4 and informed her that she would be arrested if she returned. Despite these warnings, Lye  
 5 attended Mass at Sacred Heart in March of 2010 and July of 2011. The church called the Lacey  
 6 police each time, and each time the officers arrested Lye. Lye sued, claiming the Church and the  
 7 officers violated her constitutional rights. The Court previously dismissed Lye’s claims against  
 8 the Church.

9 Lye claims that the officers violated her First and Fourth Amendment rights, and that  
 10 their actions in arresting her amount to outrage, battery, false arrest, and false imprisonment.  
 11 Lye also claims that the City of Lacey is vicariously liable for the officers’ actions. Defendants  
 12 seek dismissal of Lye’s claims against the City of Lacey, Police Officers Dave Miller, Ken  
 13 Kollman, Dave Johansen, and Eric Lever because they did not violate her rights as a matter of  
 14 law, and even if they did they are entitled to qualified immunity. For the reasons discussed  
 15 below, the Court GRANTS the Defendants’ motion for summary judgment.

## 16                   **I.         BACKGROUND FACTS.**

17                  The Court’s previous order discussed the events surrounding this case in additional detail.  
 18 [Dkt. #26]. The following facts are relevant to the claims against the remaining Defendants.  
 19 Plaintiff Hui Son Lye was a member of Sacred Heart Catholic Church in Lacey, WA who had  
 20 been “petitioning” and “voice[ing] her concern to church leaders and to the elected leaders of the  
 21 [Church]” about wanting to have the Mass given in Korean. [Dkt. #27 at 3]. Lye continued her  
 22 “petitioning” until the Archbishop and the Archdiocese’s general counsel informed Lye that she  
 23 was no longer welcome at Sacred Heart as a result of her alleged “threatening and harassing

1 actions against parish personnel." [Dkt. #27 at 4]. Nevertheless, Lye affirmatively alleges that  
 2 she did not understand why the Church was excluding her, so she elected to attend Mass at  
 3 Sacred Heart three days later. Lye claims she did not cause any disruption, and that, other than  
 4 the written warning not to enter the premises, nobody asked her to leave. The following day,  
 5 Lacey Police Officer Dave Miller (a parishioner) assisted a church staff member in filing a  
 6 "trespass warning," and he then personally served it on Lye. This was the extent of Miller's  
 7 involvement in this case.

8 On March 21, 2010, Lye again attended Mass at Sacred heart despite the trespass  
 9 warning. After the service, Officers Kollman and Lever arrested Lye for trespass. Lye alleges  
 10 that Kollman and Lever used excessive force during her arrest. She claims that the officers told  
 11 her she was trespassing, and immediately placed her under arrest. Then, "[w]ithout warning,  
 12 [Officer Kollman] shoved [her] against her car, twisted her arms behind her back and handcuffed  
 13 her" and "[e]ach [officer] grabbed one of [her] arms and forced her into the car, pushing her  
 14 head down as she stepped in." [Pl's. Response to Motion for Sum Jdg., Dkt. #33 at 3].

15 Lye initially sued the Church in the spring of 2011 over these incidents, but dismissed the  
 16 case without prejudice in anticipation that doing so would lead to some sort of reconciliation and  
 17 again began attending Mass at Sacred Heart. Instead of reconciling, the Church again told her to  
 18 stop attending Mass at Sacred Heart or she would be arrested for trespass. Lye's Counsel  
 19 responded by telling the Church that the previous trespass warning had expired and that Lye was  
 20 going to attend Sacred Heart. The Church then issued another formal trespass warning that  
 21 Officers Kollman and Johansen served on Lye. On July 1, 2011, despite these warnings, Lye  
 22 attended Mass at Sacred Heart and Officers Kollman and Johansen arrested her. Lye alleges no  
 23 complaint of excessive force against the officers during this arrest.

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1 In this suit, Lye claims that Officers Kollman, Lever, and Johansen violated her First  
2 Amendment rights of free speech and free exercise of religion, her Fourth Amendment rights  
3 against unreasonable seizure, as well as claims of conspiracy, outrage, false arrest and false  
4 imprisonment. Lye claims that Officers Kollman and Lever also violated her Fourth Amendment  
5 right against unreasonable force and that they are liable in tort for battery. Lye brings a claim of  
6 outrage against all defendants and a claim that the City of Lacey is liable for the actions of the  
7 officers.

8 The Defendants seek Summary Judgment, arguing primarily that the pleadings,  
9 documents, and other materials show that they did not violate Lye's rights and that there is no  
10 genuine issue of material fact regarding the Lye's claims. The Defendants also claim that if the  
11 officers did violate Lye's rights, they are entitled to qualified immunity. Lye argues in response  
12 that the arrests were illegal because the officers did not have probable cause for arresting her,  
13 that the officers used unreasonable force during her arrest, and that both of these issues are  
14 questions for the jury.

## 15 II. DISCUSSION.

### 16 A. Summary Judgment Standard.

17 Summary judgment is appropriate when, viewing the facts in the light most favorable to  
18 the nonmoving party, there is no genuine issue of material fact which would preclude summary  
19 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to  
20 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to  
21 interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for  
22 trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere existence of a scintilla of  
23 evidence in support of the non-moving party's position is not sufficient." *Triton Energy Corp. v.*  
24 *Square D Co.*, 68 F.3d 1216, 1221 (9<sup>th</sup> Cir. 1995). Factual disputes whose resolution would not

1 affect the outcome of the suit are irrelevant to the consideration of a motion for summary  
 2 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words,  
 3 “summary judgment should be granted where the nonmoving party fails to offer evidence from  
 4 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d at  
 5 1220.

6 **B. Qualified Immunity Standard.**

7 Qualified immunity “shields an officer from suit when she makes a decision that, even if  
 8 constitutionally deficient, reasonably misapprehends the law governing the circumstances she  
 9 confronted.” *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). Qualified immunity protects  
 10 officers not just from liability, but from suit: “it is effectively lost if a case is erroneously  
 11 permitted to go to trial,” and thus, the claim should be resolved “at the earliest possible stage in  
 12 litigation.” *Anderson v. Creighton*, 483 U.S. 635, 640 n.2 (1987). The Supreme Court has  
 13 endorsed a two-part test to resolve claims of qualified immunity: a court must decide (1) whether  
 14 the facts that a plaintiff has alleged “make out a violation of a constitutional right,” and (2)  
 15 whether the “right at issue was ‘clearly established’ at the time of defendant’s alleged  
 16 misconduct.” *Pearson v. Callahan*, 553 U.S. 223, 232 (2009). For a constitutional right to be  
 17 clearly established, “[t]he contours of the right must be sufficiently clear that a reasonable  
 18 official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483  
 19 U.S. 635, 640 (1987). The Supreme Court has stated that “the relevant, dispositive inquiry in  
 20 determining whether a right is clearly established is whether it would be clear to a reasonable  
 21 officer that his conduct was unlawful in the situation he confronted.” *Brosseau v. Haugen*, 543  
 22 U.S. 194, 198–99 (2004).

23 The purpose of qualified immunity is “to recognize that holding officials liable for  
 24 reasonable mistakes might unnecessarily paralyze their ability to make difficult decisions in

1 challenging situations, thus disrupting the effective performance of their public duties.” *Mueller*  
 2 *v. Auker*, 576 F.3d 979, 993 (9th Cir. 2009). Because “it is inevitable that law enforcement  
 3 officials will in some cases reasonably but mistakenly conclude that probable cause [to arrest] is  
 4 present,” qualified immunity protects officials “who act in ways they reasonably believe to be  
 5 lawful.” *Garcia v. County of Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011) (quoting *Anderson*,  
 6 483 U.S. at 631). An additional purpose of the doctrine is to “protect officers from the  
 7 sometimes ‘hazy border’ between excessive and acceptable force.” *Brosseau v. Haugen*, 543  
 8 U.S. 194, 198 (2004)(quoting *Saucier v. Katz*, 533 U.S. 194, 206 (2001)).

9 **C. Fourth Amendment Claim.**

10 1. Unreasonable Seizure.

11 Lye asserts that the officers belief that they had probable cause to arrest her for trespass  
 12 was unreasonable because the church was open to the public and she “was not disruptive” on the  
 13 days of the arrests. Lye argues that this means that she was complying with the lawful conditions  
 14 of being on the property and that the question of whether the officers had probable cause is a  
 15 question for a jury. [Dkt. #33 at 2-3]. The Defendants argue that the evidence does not support a  
 16 claim that the officers lacked probable cause for an arrest, and that the officers are entitled to  
 17 qualified immunity in any event.

18 When a warrantless arrest is the subject of a § 1983 action, the Fourth Amendment’s  
 19 prohibition against unreasonable seizures is not violated when there is probable cause for an  
 20 arrest. *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001). “The substance of all the definitions of  
 21 probable cause is a reasonable ground for belief.” *Maryland v. Pringle*, 540 U.S. 366 (2003). In  
 22 Washington, criminal trespass is defined as “knowingly enter[ing] or remain[ing] unlawfully in  
 23 or upon premises of another.” Wash. Rev. Code § 9A.52.080. A person enters or remains  
 24 unlawfully in or upon premises when “he is not then licensed, invited or otherwise privileged to

1 so enter or remain.” Wash. Rev. Code § 9A.52.010. It is a defense to a criminal trespass  
 2 violation if “the premises were open at the time to members of the public and the actor complied  
 3 with all lawful conditions imposed on access to or remaining in the premises.” Wash. Rev. Code  
 4 § 9A.52.090. A private property owner may revoke an individual’s privilege to be on its  
 5 property, even if the property is otherwise open to the public. *State v. Bellerouche*, 129 Wash.  
 6 App. 912, 915–16 (2005). Thus, it is unlawful to enter or remain on private property where the  
 7 private property owner has revoked the privilege to be there.

8 Lye had been “petitioning” and “voice[ing] her concern to church leaders and to the  
 9 elected leaders of the [Church]” about wanting to have the Mass given in Korean. [Dkt. #27 at  
 10 3]. Lye continued her “petitioning” and the Church Defendants revoked Lye’s privilege to  
 11 attend Sacred Heart—a fact she has admitted. It is undisputed that Sacred Heart Church is  
 12 private property. It was therefore unlawful for Lye to be on Church property at the times of her  
 13 arrests. Lye’s claim that the officers lacked probable cause for her arrest because the church was  
 14 “open to the public” and she “complied with all lawful conditions” fail as a matter of law: she  
 15 did not comply with all lawful conditions. She was trespassing.

16 Even viewing the facts in the light most favorable to Lye, no reasonable jury could return  
 17 a verdict in Lye’s favor on her unreasonable seizure claim against the City and its officers as a  
 18 matter of law. The Defendants’ Motion for Summary Judgment on Plaintiffs’ fourth amendment  
 19 unreasonable seizure claim is therefore GRANTED, and that claim is DISMISSED WITH  
 20 PREJUDICE.

21 2. Excessive Use of Force.

22 a. *Officers Kollman and Lever did not Use Excessive Force When They Arrested Lye.*

23 Lye claims that Officers Kollman and Lever’s used excessive force during her arrest on  
 24 March 21, 2010, because she “posed no threat to the safety of anyone” and “had been peacefully

1 leaving the premises.” Lye argues that the reasonableness of the officers’ use of force is a  
 2 question for a jury. [Dkt. #33 at 9-10]. The Defendants argue that Lye has not provided any  
 3 evidence supporting her claim that the officers’ use of force was excessive, and that the officers  
 4 are entitled to qualified immunity in any event.

5       The reasonableness of the force used is determined by “carefully balancing the nature and  
 6 quality of the intrusion on the individual’s Fourth Amendment interests against the  
 7 countervailing governmental interests at stake.” *Deorle v. Rutherford*, 272 F.3d 1272, 1279 (9th  
 8 Cir. 2001) (citing *Graham*, 490 U.S. at 396). Courts assess the “quantum of force used to arrest”  
 9 by considering “the type and amount of force inflicted.” *Id.* at 1279–80. The “right to make an  
 10 arrest... necessarily carries with it the right to use some degree of physical coercion or threat  
 11 thereof to effect it.” *Graham v. M.S. Connor*, 490 U.S. 386, 396 (1989).

12       Lye claims that, after informing her that she was trespassing, Officers Kollman and Lever  
 13 immediately placed her under arrest. Then, “[w]ithout warning, [Officer Kollman] shoved [her]  
 14 against her car, twisted her arms behind her back and handcuffed her” and “[e]ach [officer]  
 15 grabbed one of [her] arms and forced her into the car, pushing her head down as she stepped in.”  
 16 [Dkt. #33 at 3]. Lye does not allege that the officers hurt her, but that their actions were  
 17 unreasonable under the circumstances because she was leaving the premises “of her own accord”  
 18 and that they could have “simply issued a citation and allowed her to depart with a court date.”  
 19 [Dkt. #33 at 10].

20       Lye has offered no legal or logical support for her claim that the officers had no  
 21 Constitutional right to arrest her when she repeatedly and knowingly trespassed on the Church’s  
 22 property. There is no such authority and her claim that the officers used excessive force used in  
 23 making the lawful arrest fails as a matter of law.

24

1        *b. The Officers' Conduct did not Violate a "Clearly Established" Right.*

2            Lye argues that the officers' use of force during her arrest was not objectively reasonable,  
 3 and that the officers should have known that their actions constituted excessive force.  
 4 Defendants argue that even if the officers did use excessive force, the law did not put them on  
 5 notice that their conduct was clearly unlawful in the circumstances.

6            For a constitutional right to be clearly established, “[t]he contours of the right must be  
 7 sufficiently clear that a reasonable official would understand that what he is doing violates that  
 8 right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). The Supreme Court has stated that  
 9 “the relevant, dispositive inquiry in determining whether a right is clearly established is whether  
 10 it would be clear to a reasonable officer that his conduct was unlawful in the situation he  
 11 confronted.” *Brosseau v. Haugen*, 543 U.S. 194, 198–99 (2004).

12           Even if there is a question of fact about whether the officers used excessive force, the  
 13 officers are entitled to qualified immunity on this claim because Lye has not identified and  
 14 cannot identify any clearly established precedent suggesting, much less holding, that an officer  
 15 cannot arrest someone for trespassing.

16           Viewed in the light most favorable to her, the evidence could not support a jury verdict in  
 17 Lye’s favor on her excessive force claim against the City and its officers as a matter of law. The  
 18 Defendants’ Motion for Summary Judgment on Plaintiffs’ Fourth Amendment excessive force  
 19 claim is therefore GRANTED, and that claim is DISMISSED WITH PREJUDICE.

20        **D. First Amendment Claim.**

21           Lye asserts a 42 U.S.C. §1983 claim against the officers for violating her First  
 22 Amendment rights of freedom of worship and freedom of speech. The Defendants argue that  
 23 Lye has not provided any evidence supporting her claim that the officers deprived her of her First  
 24 Amendment rights.

1        In order to succeed on her First Amendment claim, Lye must provide evidence showing  
 2 that the officers' actions (1) deterred or chilled her speech and (2) such deterrence was a  
 3 substantial or motivating factor in the officers' conduct. *Mendocino Envtl. Ctr. V. Mendocino*  
 4 *Cty.*, 192 F.3d 1283, 1300 (9<sup>th</sup> Cir. 1999).

5        Lye argues that the defendants "deprived [her] of her first amendment rights of freedom  
 6 of worship" and that the arrests "also chilled her exercise of freedom of speech" when they  
 7 arrested her "for peacefully attending church." [Dkt. 27 at 11]. Defendants argue that they had  
 8 no desire to chill Lye's rights and that they were "acting simply to enforce trespass laws" [Dkt.  
 9 31 at 7]. Lye offers no evidence—and indeed makes no factual allegations—even suggesting  
 10 that the officers had any desire or motivation to chill her first amendment rights when they  
 11 arrested her for violating a no-trespass order. And there is no reasonable inference from the facts  
 12 supporting such a claim.

13        Even viewing the facts in the light most favorable to Lye, no reasonable jury could return  
 14 a verdict in Lye's favor on her First Amendment claim against the City and its officers as a  
 15 matter of law. The Defendants' Motion for Summary Judgment on Plaintiffs' First Amendment  
 16 claim is therefore GRANTED, and that claim is DISMISSED WITH PREJUDICE.

17        **E. Conspiracy to Violate the First and Fourth Amendment.**

18        Lye asserts a civil conspiracy claim against the City of Lacy and the individual officers.  
 19 Lye claims that the City of Lacey and its officers acted in concert with the Corporation of the  
 20 Catholic Archdiocese of Seattle and a church employee named Farrell Gilson (together the  
 21 "Church Defendants") to deprive Lye of her first and fourth amendment rights "through  
 22 intimidation and arrest... simply upon the demand of the church that she be arrested.." [Dkt. #27  
 23 at 9-10]. The Defendants argue that Lye has not provided any evidence that supports a claim that  
 24

1 the City of Lacey or its officers conspired with anyone to deprive Lye of her First and Fourth  
2 Amendment rights.

3 To establish a *prima facie* case for conspiracy, a plaintiff must show: (1) two or more  
4 people combined to accomplish an unlawful purpose, or combined to accomplish a lawful  
5 purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the  
6 conspiracy. *Woody v. Stapp*, 146 Wash. App. 16, 22 (2008).

7 Lye argues that because the trespass warning was unwarranted, the City and the Church  
8 Defendants made an agreement to accomplish an unlawful purpose. The Court dismissed this  
9 claim against the Church Defendants in June of 2012. [Dkt. #26]. As discussed above, the  
10 officers' actions were lawful and Lye does not allege that the Defendants conspired with anyone  
11 else. Additionally, and in any event, Lye's response to the Defendant's Motion makes no  
12 mention of her conspiracy claim, and she has provided no evidence in support of it.

13 Even viewing the facts in the light most favorable to Lye, no reasonable jury could return  
14 a verdict in her favor on her conspiracy claim as a matter of law. The Defendants' Motion for  
15 Summary Judgment on Plaintiffs' conspiracy claim is therefore GRANTED, and that claim is  
16 DISMISSED WITH PREJUDICE.

17 **F. Federal Claims against the City of Lacey.**

18 Lye also asserts a *Monell* claim against the City of Lacey. The Defendants argue that the  
19 evidence does not support such a claim as a matter of law.

20 In order to set forth a claim against a municipality under 42 U.S.C. § 1983, a plaintiff  
21 must show that the defendant's employees or agents acted through an official custom, pattern or  
22 policy that permits deliberate indifference to, or violates, the plaintiff's civil rights; or that the  
23 entity ratified the unlawful conduct. See *Monell v. Department of Social Servs.*, 436 U.S. 658,  
24 690-91 (1978); *Larez v. City of Los Angeles*, 946 F.2d 630, 646–47 (9th Cir. 1991). Under

1   | *Monell*, a plaintiff must allege (1) that a municipality employee violated a constitutional right;  
2   | (2) that the municipality has customs or policies that amount to deliberate indifference; and (3)  
3   | those customs or policies were the “moving force” behind the constitutional right violation.  
4   | *Board of County Com’rs v. Brown*, 520 U.S. 397, 404 (1997). A municipality is not liable  
5   | simply because it employs a tortfeasor. *Monell*, 436 U.S. at 691. A municipality may be liable  
6   | for inadequate police training when “such inadequate training can justifiably be said to represent  
7   | municipal policy” and the resulting harm is a “highly predictable consequence of a failure to  
8   | equip law enforcement officers with specific tools to handle recurring situations.” *Long v.*  
9   | *County of Los Angeles*, 442 F.3d 1178, 1186 (9th Cir. 2006); *id.* (quoting *Board of County*  
10 | *Com’rs*, 520 U.S. at 409).

11           In her Amended Complaint Lye alleges that the City has a policy of “arresting people  
12   upon receiving a trespass complaint from a third party, without ever substantiating that the party  
13   to whom the trespass warning is issued has committed any illegal act or disturbed the peace.”  
14   [Dkt. #27 at 10]. Lye also alleges that the City of Lacey issues trespass warnings “to prohibit a  
15   person from going into a place of public assembly without even requiring the grounds upon  
16   which a court could issue a no contact order or anti harassment order.” [Dkt. #27 at 10.]  
17   Additionally, and in any event, Lye’s response to the Defendant’s Motion makes no mention of  
18   her conspiracy claim, and she has provided no evidence in support of it.

19           There is no evidence whatsoever supporting the existence of such a policy, and even  
20   viewing the facts in the light most favorable to Lye, no reasonable jury could return a verdict in  
21   her favor on this claim as a matter of law. The Defendants’ Motion for Summary Judgment on  
22   Plaintiffs’ civil rights claim against the City of Lacey is therefore GRANTED, and that claim is  
23   DISMISSED WITH PREJUDICE.

1      **G. Outrage.**

2            Lye claims that the Defendants' conduct was outrageous and she has suffered severe  
3 emotional distress because of it. The Defendants argue that the evidence does not support such a  
4 claim as a matter of law.

5            In order to prevail on an outrage claim, a plaintiff must prove (1) extreme or outrageous  
6 conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual emotional  
7 distress. *Kloepfel v. Bokor*, 149 Wn.2d 192, 194 (2003). The conduct must be "so outrageous in  
8 character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be  
9 regarded as atrocious, and utterly intolerable in a civilized community." *Saldivar v. Momah*, 145  
10 Wash. App. 365, 389 (2008).

11          Lye's response to the Defendant's Motion makes no mention of her outrage claim, and  
12 she has provided no evidence in support of it. Even viewing the facts in the light most favorable  
13 to Lye, no reasonable jury could return a verdict in Lye's favor on her outrage claim against the  
14 City and its officers as a matter of law. The Defendants' Motion for Summary Judgment on  
15 Plaintiffs' outrage claim against the Defendants is therefore GRANTED, and that claim is  
16 DISMISSED WITH PREJUDICE.

17      **H. Battery.**

18          Lye claims that the arresting officers committed battery when they arrested her. The  
19 Defendants argue that the evidence does not support such a claim as a matter of law.

20          Battery is the intentional infliction of harmful or offensive contact with a person.  
21 *McKinney v. Tukwila*, 103 Wn. App. 391, 408-409 (2000). A lawful touching by an law  
22 enforcement officer cannot be considered a battery. *Boyles v. Kennewick*, 62 Wn. App. 174, 176,  
23 813 P.2d 178 (1991).

1 Lye's alleges that the Officers Kollmann and Lever committed battery on March 21,  
2 2010, when they "[w]ithout warning, shoved [her] against her car, twisted her arms behind her  
3 back and handcuffed her" and that " [e]ach [officer] grabbed one of [her] arms and forced her  
4 into the car, pushing her head down as she stepped in." [ Dkt. #33 at 3]. For the reasons  
5 discussed regarding Lye's excessive force claim, there is no evidence to support a battery claim  
6 against the City and its officers.

7 Even viewing the facts in the light most favorable to Lye, no reasonable jury could return  
8 a verdict in Lye's favor on her battery claim against the City and its officers as a matter of law.  
9 The Defendants' Motion for Summary Judgment on Plaintiffs' battery claim is therefore  
10 GRANTED, and that claim is DISMISSED WITH PREJUDICE.

11 **I. False Arrest and False Imprisonment.**

12 Lye claims that, because the officer's did not have probable cause, her arrest was illegal  
13 and she was therefore falsely imprisoned. The Defendants argue that the evidence does not  
14 support such a claim as a matter of law.

15 In order to establish a claim for false arrest, a plaintiff must prove that "the defendant  
16 violated the plaintiff's right of personal liberty or restrained the plaintiff without legal authority."  
17 *Dunn*, 676 F. Supp. 2d at 1195 (citing *Bender v. City of Seattle*, 99 Wn.2d 582 (1983)). The  
18 elements of false imprisonment are identical except that no legal authority is required for a  
19 restraint or confinement to constitute false imprisonment. *Jacques v. Sharp*, 83 Wn. App. 532  
20 (1996). Liability may be established provided the defendant had an active role in bringing about  
21 the unlawful arrest "by some affirmative direction, persuasion, request, or voluntary  
22 participation." *Dunn*, 676 F. Supp. 2d at 1196. Probable cause is a complete defense to a claim  
23 of false arrest and false imprisonment. *Hanson v. Snohomish*, 121 Wn.2d 552, 563, 852 P.2d 295  
24 (1993).

1 As discussed regarding Lye's unreasonable seizure claim, it is undisputed that Sacred  
 2 Heart Church is private property. The Church Defendants revoked Lye's privilege to attend  
 3 Sacred Heart—a fact she has admitted. It was unlawful for Lye to be on Church property. Lacy  
 4 police issued Lye a trespass warning, and she entered Sacred Heart's premises anyway. Lye's  
 5 arguments that the officers lacked probable cause for her arrest because the church was open to  
 6 the public and she complied with all lawful conditions fail because she did not comply with all  
 7 lawful conditions—she was trespassing.

8 There is no evidence supporting Lye's false arrest and false imprisonment claims against  
 9 the City and its officers. Even viewing the facts in the light most favorable to Lye, no reasonable  
 10 jury could return a verdict in Lye's favor on these claims against the City and its officers as a  
 11 matter of law. The Defendants' Motion for Summary Judgment on Plaintiffs' false arrest and  
 12 false imprisonment claims is therefore GRANTED, and that claim is DISMISSED WITH  
 13 PREJUDICE.

14 **J. City of Lacey's Vicarious Liability**

15 Lye claims that the City is vicariously liable for its officers' state law torts of Outrage,  
 16 Battery, False Arrest, and False Imprisonment.

17 "A finding of employee nonliability precludes any finding that the employer is liable,  
 18 where liability is based solely on the doctrine of respondeat superior." *Spurrel v. Bloch*, 40  
 19 Wash. App. 854, 869, 701 P.2d 529 (1985) Because Lye's only state law claim against the City  
 20 of Lacey is through vicarious liability for the officers alleged Outrage, Battery, False Arrest and  
 21 Imprisonment, the City of Lacey is only liable if the individual officers are liable.

22 In the absence of a viable claim against any officer, Lye's claims against the city fail as a  
 23 matter of law. Defendant's Motion for Summary Judgment on Plaintiff's vicarious liability  
 24 claim is therefore GRANTED, and that claim is DISMISSED WITH PREJUDICE.

### III. CONCLUSION

Defendants' Motion for Summary Judgment [Dkt. #31] is **GRANTED**, and all of Plaintiff's remaining claims are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated this 8th day of February, 2013.

Ronald B. Leighton

Ronald B. Leighton  
United States District Judge